

THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

FILED

SEP 06 2012

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY 18 DEP CLK

Eddie Ray: Kahn,
Petitioner

Crim. Case No. 1:08-cr-271

v.

Case No. 5:12-HC-2149FL

Jonathan C. Miner, Warden
Respondent

MOTION FOR RECONSIDERATION

I deny that Judge Flanagan's Order denying my Common Law Writ of Habeas Corpus Ad Subjiciendum is valid for the following reasons:

1. Judge Flanagan states in her Order "Although petitioner captions his petition a request for a writ of habeas corpus ad subjiciendum, the court construes his petition for a writ of habeas corpus pursuant to 28 U.S.C. section 2241" (underlining added).

a. What the caption actually stated is "Common Law Writ of Habeas Corpus Ad Subjiciendum Petition" (underlining added). That was done to let the judge being assigned to this case know that this is a common law Action.

b. Also, in the first paragraph in the body of the Petition I stated "It is a common law pleading and will be pled according to the rules of the common law, pursuant to the 7th Amendment of the Constitution of the United States of America (CUSA)".

c. Additionally, on page 6 of the Petition, in the section entitled PETITION FOR HABEAS CORPUS AD SUBJICIENDUM, I stated:

"24. This Petition is a common law Writ of Habeas Corpus Ad Subjiciendum.

25. As is stated in the U.S. Supreme Court case of Odell v. Farnsworth, 63 L Ed. 1111, "The Party who brings Suit is master to decide what law he will rely upon, and the allegations of his bill are the evidence, or the expression, of his decision, upon which the federal courts must act in determining the question of their jurisdiction".

2. I do not know how I could have made it any clearer as to what law I am bringing this Action under. And, since the Supreme Court unambiguously stated that **"The Party who brings suit is master to decide what law he will rely upon,"** it is obviously my choice, not Judge Flanagan's. According to the Supreme Court in the aforementioned case, the only decision Judge Flanagan would have to make is a determination as to whether she has jurisdiction to hear the case or not.

3. According to the Judiciary Act of 1789, I certainly have a Right to bring this Action in the Common Law. In Section 9 of that Act **",the right of a common law remedy, where the common law is competent to give it;"** tells me that remedy is available to me.

4. The definition in Black's Law Dictionary, 8th Ed. of Habeas Corpus Ad Subjiciendum states: **"A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained. This is the most common form of habeas corpus writ, the purpose of which is to test the legality of the detention or imprisonment; not whether he is guilty or innocent."**

5. That definition tells me that is exactly the Writ I need to use to gain my freedom.

6. Question: The U.S. District Courts use the Common Law Writs of Habeas Corpus Ad Prosequendum and Ad Testificandum daily (Ex. **A+B**) to bring people to court, so why is Judge Flanagan denying me my Right to use the Ad Subjiciendum?

7. As far as requiring me to use the 2241 form, it seems pretty obvious that Judge Flanagan has not read Section 32 of the Judiciary Act of 1789, although I had included a copy of the entire Act as an exhibit with the Habeas.

8. Section 32 states, in pertinent part: **"And be it further enacted, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according to the right of the cause and matter in law shall appear unto them,"**.

9. According to Section 32, no form can be required, it can only be requested.

10. Lastly, Judge Flanagan states **"the court notifies petitioner that the allegations in his petition are unclear. Accordingly, he must particularize his petition and state specifically each of his grounds for relief in the space provided on the section 2241 petition"**.

11. I honestly don't know how much clearer I could possibly make it. It is a very simple allegation and request for relief.

a. The allegation: The Department of Justice and it's bureau, the Bureau of Prisons, have never been authorized by an Act of Congress, to imprison anyone. No agency or branch of government has any authority to do anything unless it has been authorized by an Act of Congress. In his response to a Freedom of Information Act/Privacy Act request (Ex. C), Jason Sickler, Regional Counsel for the Bureau of Prisons, was unable to provide any document that identified any Act of Congress that authorized the DOJ/BOP to imprison anyone.

Without such an Act of Congress giving them that authority, they could not have transferred that authority to the Warden at Rivers Correctional Institution, who has had me in his custody since August 5, 2011. Without that Congressional authority, I am being falsely imprisoned.

b. The remedy: For the judge to exercise her ministerial duty and issue the Writ to the Respondent. If the Respondent can produce an Act of Congress that authorizes the DOJ/BOP to imprison someone, then my allegation will be moot. However, if the Respondent cannot produce an Act of Congress that authorizes the DOJ/BOP to imprison me, then the remedy is immediate release, pursuant to the Non Detention Act of 1971, which states in pertinent part: **"No citizen shall be imprisoned, or otherwise detained, by the United States, except pursuant to an Act of Congress"**.

CONCLUSION

I believe justice would best be served if Chief Judge James C. Dever, III would recuse Judge Flanagan from this case for the following reasons:

1. Based on Judge Flanagan's response to the Writ, I do not believe that Judge Flanagan's office was established by Section 3 of the Judiciary Act of 1789. If it was not, then she, as an Executive branch officer, would only be able to deal with Code. She would have no Article III "judicial power" to deal with Acts of Congress or the CUSA.

2. Judge Flanagan is denying me the use of the law of my choice.

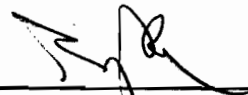
3. Judge Flanagan is trying to force me to use United States Code, which is not law at all (See Preface - 1926 U.S. Code Book).

4. Judge Flanagan, by her own admission, does not understand my allegation or my request for relief.

5. NOTE: Even the U.S. Department of Justice recognizes the importance of Common Law remedies being available to the people, when you read, on the front page of their website, the following words: **THE COMMON LAW IS THE WILL OF MANKIND ISSUING FROM THE LIFE OF THE PEOPLE**" (Ex. D).

Based on the above reasons, I respectfully ask that Judge Dever appoint a judge to hear my Common Law Action whose office was established by Sections 3 and 8 of the Judiciary Act of 1789. That judge is authorized by that Act of Congress to adjudicate a Common Law case and, I am sure, will abide by the Habeas Corpus rules and Section 14 of the Judiciary Act of 1789 to issue the Writ immediately.

Date: August 31, 2012



Eddie Ray: Kahn

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